

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

UNITED STATES DISTRICT COURT

2005 JULY 17 PM 4:43

SOUTHERN DISTRICT OF GEORGIA

CLERK

SO. DIST. GA.

SAVANNAH DIVISION

KELVIN GARY CHIPP,)
)
Movant,)
)
v.) Case No. CV405-61
) [Underlying CR403-3]
UNITED STATES OF AMERICA,)
)
Respondent.)

REPORT AND RECOMMENDATION

Movant has filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. For the following reasons, the Court recommends that the motion be DENIED.

Movant was indicted by a federal grand jury on January 9, 2003 on one count of possession of a firearm by a convicted felon, one count of possession of crack cocaine with intent to distribute, and one count of use of a firearm during the commission of a drug trafficking crime. Doc. 1.¹

Movant pleaded guilty to possession of a firearm by a convicted felon.

¹Citations are to the docket in movant's criminal case, CR403-3.

On August 7, 2003, the Court sentenced movant to 216 months' imprisonment, five years' supervised release, and a \$100 special assessment. Doc. 37. Movant did not timely appeal, and his conviction became final on August 21, 2003 when the ten-day period for filing a notice of appeal expired.² Fed. R. Civ. P. 4(b)(1)(A)(i).

Movant is currently incarcerated at the Federal Correctional Institution at Lisbon, Ohio. His § 2255 motion was executed on March 17, 2005 and was filed with the Court on April 18, 2005. In his motion, movant contends that his counsel was ineffective during plea negotiations in his case. He further claims that his counsel failed to advise him of his right to appeal and failed to raise a Fourth Amendment issue. He further alleges that he and his trial counsel have a conflict of interest.

The Antiterrorism and Effective Death Penalty Act of 1996 amended § 2255 to require a movant to file a § 2255 motion within one year of the date movant's conviction becomes final. Movant was convicted on August 7, 2003, and because he did not file a timely appeal, his conviction became

²Movant did file a notice of appeal on February 6, 2004, about six months after he was sentenced. Doc. 38. The appeal was dismissed as untimely by the Eleventh Circuit. Doc. 44. Movant filed a motion for reconsideration, which was denied. Doc. 45.

final ten days after the Court entered judgment following sentencing. Mederos v. United States, 218 F.3d 1252, 1253 (11th Cir. 2000). Therefore, under § 2255 ¶6(1), petitioner's conviction became final on August 21, 2003, when the time for filing a notice of appeal expired. See Fed. R. App. P. 4(b)(1)(A)(i) (establishing ten-day period). Movant should have filed his § 2255 motion within a year of that date, or by August 21, 2004. However, he executed his § 2255 motion on March 17, 2005, almost seven months beyond that date. Thus, it is time-barred. Movant presents no newly discovered evidence or rule of law to excuse his untimely filing. Accordingly, the Court recommends that movant's § 2255 motion be DENIED.

**SO REPORTED AND RECOMMENDED this 1st day of June,
2005.**


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

United States District Court
Southern District of Georgia

KELVIN GARY CHIPP

)
vs)
UNITED STATES OF AMERICA)

CASE NUMBER CV405-61(CR403-3)

DIVISION SAVANNAH

The undersigned, a regularly appointed and qualified deputy in the office of the Clerk of this district, while conducting the business of the Court for said division, does hereby certify the following:

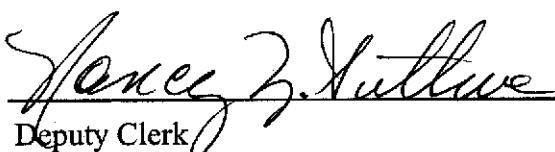
1. Pursuant to the instructions from the Court and in the performance of my official duties, I personally placed in the United States Mail a sealed envelope, and properly addressed to each of the persons, parties or attorneys named below; and
2. That the aforementioned enveloped contained a copy of the document dated June 1, 2005, which is part of the official record of this case.

Date of Mailing: June 2, 2005

Date of Certificate same date, or _____

Scott L. Poff, Clerk

By:


Nancy J. Nallwe
Deputy Clerk

Name and Address

Kelvin Chipp, 1419021, FCI Elkton, P.O. Box 10, Lisbon, OH 44432
Amy Lee Copeland, Esq.

- Copy placed in Minutes
 Copy given to Judge
 Copy given to Magistrate